IN THE
SUPREME COURT OF PENNSYLVANIA,
WESTERN DISTRICT.

JOHN PAINTER, *Appellant*,
vs.
BALTIMORE & OHIO RAILROAD COMPANY, *a Corporation*.
No. 5 March Term, 1940.

APPELLANT'S SUPPLEMENTAL BRIEF. FILED BELOW

The Act of Congress, approved August 11, 1939, Ch. 685 Sec. 1, 33 Stat. 1404 cited in our original Brief, is retroactive, the legislative intent being to clarify the meaning of the earlier statute and to surpress the mischief created by the narrowed construction of the Act placed upon it by the Courts. The further purpose of the amendment was to advance the remedy.

The report of the Senate Judiciary Committee of June 22, 1939, 76th Congress, First Session, Calendar No. 712, Report 661, stated it was the aim of the bill to amend the Act in three particulars: 1st, it broadens and clarifies the law in its application to employees who may be killed or injured while in the service of a railroad company engaged in interstate or foreign commerce; 2nd, It abrogates the defense of assumption of risk in cases where injury or death is caused by the negligence of a carrier, and makes the doctine of comparative negligence applicable instead; 3rd, It prohibits the promulgation or enforcement of rules which penalize railroad employees

from giving information concerning accidents to the injured person or his representative.

The legislative intent that the statute have a retroactive operation may be readily inferred. The Judiciary Committee Report stated:

> "The question whether an employee, at the time of his injury is engaged in interstate or intrastate commerce, is frequently difficult of determination. Under the rule laid down by the Supreme Court of the United States, an employee of a railroad company who may be injured must be found to have been engaged at the time of the infliction of the injury 'in transportation or work so closely related to it to be practically a part of it'. *Shanks vs. D. L. & W. R. R.* 239 U. S., 556.******
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> "As a result of the uncertainty which exists in border line cases, there have been many instances in which suits were commenced and prosecuted to final determination only to develop the fact that the claimant had chosen the wrong remedy or sued in the wrong court, and during the acquirement of this information the statute of limitations ran against the claimant under the law applicable to the case and no recovery could be had.
>
> The adoption of the proposed amendment will, to a very large extent, eliminate the necessity of determining whether an employee at the very instant of his injury or death, was actually engaged in the movement of interstate traffic."

We submit the first paragraph of the amendment merely placed a legislative construction on the Act. It clarified the Act. It could not broaden the Act because Congress had gone to the limit in its constitutional authority in the earlier act. The Act of April 22, 1908 was enacted after the Employers' Liability Act of June 11,

1906 was declared unconstitutional under the Employers' Liability cases, 207 U. S. 463, because it sought to impose liability upon the carrier for injury to employees without qualification or restriction as to the nature of the business at the time of the injury, which included subjects wholly outside the power of Congress under the Commerce clause of the Constitution. Congress having gone beyond its authority in enacting the 1906 Act sought in the 1908 Act to control the Employers' Liability to the full extent of its constitutional authority, so the first section of the amendment of August 11, 1939, could not broaden the jurisdiction of Congress nor further extend the operation of the law, and the only purpose the first section of the amendment could have would be to clarify the law and place the proper construction on the Act of April 22, 1908.

In 59 C. J., 1181, Section 718, it is said:

> "As a general rule, the act declaring the proper construction of a former statute is given a retroactive operation so as to determine the meaning of the earlier statute from its enactment. This rule, however, is universally recognized to be subject to the limitation that a declaratory act will not be given a retroactive operation to impair vested rights or to effect cases terminated before its passage."

In *Mosle vs. Bidwell,* 65 C. C. A. 533, it is held:

> "A declaratory act in the form of an amendment, placing a legislative construction upon the original act, will be construed retrospectively as taking effect at the same time as the original act."

In *West vs. Lysle,* 302 Pa., 147, the third paragraph of the syllabus reads:

> "3. An amendatory statute should be construed

in conjunction with the act to which it is an amendment taking into account the purpose sought to be effectuated by the amendment."

The purpose sought to be effectuated by the first paragraph of the amendment of August 11, 1939, was to suppress the mischief occasioned by "the uncertainty which exists in border line cases" and to advance the remedy against the evil:

> "There have been many instances in which suits were commenced and prosecuted to final determination only to develop the fact that the claimant had chosen the wrong remedy or sued in the wrong court, and during the acquirement of this information the statute of limitations ran against the claimant under the law applicable to the case, and no recovery could be had."

The Employers' Liability Act of June 11, 1906, was declared unconstitutional as it exceeded the authority granted Congress under the Commerce clause of the Constitution, so the Employers' Liability Act of April 22, 1908 sought to legislate to the full extent of the Constitutional authority of Congress. That is evidenced by the fact that in the second paragraph of the latter act, in jurisdictions where Congress had exclusive control of commerce, as in the District of Columbia, the Panama Canal Zone and the territories of the United States, the act is fully comprehensive and is not restricted to employees "while engaging in commerce between any of the several states", as is the first section of the act, which covers cases where Congress did not have complete and exclusive jurisdiction.

We submit the amendment was to meet the exact situation that the plaintiff in the case at bar has encountered, and to afford relief to those in that situation.

Respectfully submitted,

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NOTICE

TO:

S. C. Pugliese,

Margiotti, Evans and Pugliese,

Attorneys for Respondent,

Baltimore and Ohio Railroad

Company, a Corporation, and

TO:

The Baltimore and Ohio Railroad

Company, Respondent:

You and each of you will take notice that on the .....day of....., 1940, upon the opening of the Supreme Court of the United States, or as soon thereafter as it can be heard, the foregoing petition and brief, together with a certified copy of the entire transcript of the record in the said case will be presented and submitted to the said Supreme Court of the United States at its court room in the Supreme Court Building, Washington, D. C., in pursuance of its rule in such cases made and provided.

Dated this.....day of July, 1940.

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Attorney for Petitioner.

ACCEPTANCE OF SERVICE

Service of a copy of the within notice, together with a copy of the petition for writ of certiorari, brief and record accepted this.....day of July, 1940.

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Attorneys for Respondent.